

REMARKS

Upon entry of this amendment, independent claim 1 and independent claim 2 with dependent claims 4-9 remain in the application.

The specification was objected to due to errors on page 6, line 12; page 7, lines 12, 13, 17-20 and 22; page 11, line 11; and page 12, line 17. Replacement paragraphs correcting these errors are submitted herewith. With regard to the term "ROM" on page 11, line 11, this term is an acronym for "range of motion", as is shown in Figure 17.

Claim 1 was rejected under 35 U.S.C. § 102(e) as being anticipated by or, in the alternative under 35 U.S.C. 103(a) as being obvious over U.S. 2003/0144710 (Haugland et al.) (alone) or in view of U.S. 5,586,557 (Nelson et al.), the Office Action contending that "Haugland's controller is also programmed to record a duration of use ... and number of steps during that time". However, the cited portions of the Haugland references (Figure 13 and paragraphs 112, 114, 131, 132 and 135) do not support such allegation. Haugland specifically teaches that "FIG. 13 shows data recorded from the peroneal nerve cuff during gait (**without stimulation**)."¹ If the controller of the Haugland device only records the signals 130-135 when the controller is not stimulating any muscle, it can hardly be argued that such controller records "a duration of **use** and a number of movement events during the duration of **use**" as is recited in claim 1. While Figure 13 does display an output stimulation signal 136 of the Haugland device, Figure 13 merely compares this signal to the signals that were recorded without stimulation.

With regard to the Nelson reference, it does not disclose a controller that is "programmed to record a duration of use and a number of movement events during the duration of use", as is recited in claim 1. Nelson specifically teaches that "the computer 7 determines the duration of the walk and the number of steps taken over the preset distance" (Col. 3, lines 15-17), where that preset distance is "between 3 and 6 meters" (Col. 2, lines 53-54). Clearly, calculating the time and number of steps that are required to travel over preset, relatively short distance is not recording the duration of use or the number of movements over such duration of use.

Claims 2, 4-6 and 9 were rejected under 35 U.S.C. § 103 as being unpatentable over Haugland in view of Nelson, and further in view of U.S. 5,485,402 (Smith et al.), the

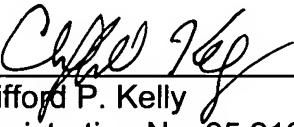
Office Action contending that Nelson "teaches measuring a duration of use and number of steps taken during that duration". As shown above however, Nelson only teaches that the duration of use and number of steps taken be recorded for a predetermined and limited distance. Since this predetermined distance is limited to 3 to 6 meters and claim 2 recites that the controller is "programmed to record in a log file a number of steps and duration of walking movements **in a time period comprising one of an hour, a day or between a period of dates**", it cannot be argued that Nelson teaches measuring a duration of use within the meaning of "use" within the claim since such use is highly variable but in any case would clearly exceed 3 to 6 meters.

As shown above, Nelson specifically teaches recording the time required to traverse a predetermined distance (the duration of use) and the number of steps that are required to traverse this predetermined distance. The Office Action contends that the Smith reference teaches recording the number of steps taken over a predetermined period of time and that it would have been obvious to modify the combination of Haugland and Nelson "to provide a more effective means of monitoring a patient's progress during rehabilitation." However, the Office Action provides no support for its conclusion that the combination proposed therein would in fact provide a more effective means of monitoring a patient's progress during rehabilitation. The Applicant respectfully submits that the three references cannot be combined in the manner suggested by the Office Action since measuring and recording the number of steps required to traverse a predetermined distance is essentially incompatible with measuring and recording the number of steps taken over a predetermined period of time. In other words, Nelson teaches away from Smith and Smith teaches away from Nelson. "One important indicium of nonobviousness is "teaching away" from the claimed invention by the prior art." In re Braat, 16 USPQ2d 1813, 1814 (Fed. Cir. 1990).

The various dependent claims add additional features to the independent claims, and are therefore believed to be allowable. Also, the dependent claims are believed patentably distinct on their own merits as being directed to combinations not suggested by the references.

In view of the above-directed amendments and the proceeding remarks, prompt and favorable reconsideration is respectfully requested.

Respectfully submitted,
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